STATE OF MICHIGAN
OFFICE OF FINANCIAL AND INSURANCE REGULATION
DEPARTMENT OF LICENSING AND REGULATION
STEVEN H. HILFINGER, DIRECTOR

RICK SNYDER
GOVERNOR

R. KEVIN CLINTON
COMMISSIONER

BILL ANALYSIS

BILL NUMBERS: SB 43 and SB 44

TOPIC: Residential Mortgage Fraud

SPONSOR: Senator Tupac Hunter

CO-SPONSORS: None listed

COMMITTEE: Banking and Financial Institutions

ANALYSIS DONE: 4/29/2011

POSITION:

The Administration supports this legislation.

PROBLEM/BACKGROUND

Mortgage fraud is a material misstatement, misrepresentation, or omission on a loan application, relied upon by an underwriter or lender to fund, purchase or insure a loan. There are two categories of mortgage fraud: fraud for property and fraud for money. Although there is no centralized reporting mechanism for gathering mortgage fraud complaints or investigations, there are numerous regulatory, industry, and law enforcement agencies that collaborate to share information they possess to assess the current trends in mortgage fraud.

According to the Federal Bureau of Investigation (FBI), mortgage fraud increased 71 percent from fiscal year 2008 to fiscal year 2009. The total dollar amount of mortgage fraud loss is unknown. First American CoreLogic did a study representing 97 percent of all United States properties and estimated that $14 billion in fraudulent loans were originated in 2009 (7.5 billion in FHA loans and 6.5 billion in conforming loans).

Despite small improvements in various economic sectors, mortgage fraud continues to increase despite the increase in government-mandated scrutiny and programs to increase mortgage fraud awareness. Prominent mortgage fraud schemes include the use of straw buyers, identity theft, silent seconds, land trusts and shell companies. There are many fraudulent loan documents including but not limited to forged application, verifications of employment and proof of income.

Mortgage fraud is also found in the form of double sold loans to secondary investors, leasebacks, and inflated appraisals.

According to the FBI, the mortgage fraud perpetrators are industry insiders, including mortgage brokers, lenders, appraisers, underwriters, accountants, real estate agents, settlement attorneys, land developers, investors, builders, and bank and trust account representatives. The Mortgage Loan Fraud Suspicious Activity Report (MLF SAR) identified over half of MLF SAR subjects in the 2010 third quarter as borrowers.

An analysis of available law enforcement and industry data indicates that Michigan continues to be one of the top states for mortgage fraud. It has been listed in several of the 2009 FBI top 10 lists: same day property flips; 30 day property flipping; mortgage fraud across all originations; activity based on fraudulent loan applications; Fannie Mae's list based on significant misrepresentations; the number of foreclosures fillings per housing unit; and FBI field division's report of the greatest variety of mortgage fraud.

DESCRIPTION OF BILL

Senate bill number 43 amends 1931 PA 328, the Michigan Penal Code by adding section 219D which states:

- A person who knowingly with intent to defraud or conspire to defraud, makes false statements, misrepresentations or non-disclosures of a material fact during the mortgage lending process, violates section 219D and is guilty of a felony.
- A person who knowingly uses, facilitates or conspires the use of a false statement, misrepresentation made by another person concerning a material fact or deliberately uses or facilitates the use of another person's concealment or failure to disclose a material fact during the mortgage lending process violates section 219D and is guilty of a residential mortgage fraud.
- A person who knowingly receives attempts to receive or conspires to receive any proceeds or any other money in connection with the above listed violations in the mortgage lending process violates section 219D and is guilty of a felony.
- A person who knowingly files, causes to be filed, or conspires to be filed with the register of deeds of any county of this state any document involved in the mortgage lending process that contains a deliberate material misstatement, misrepresentation, or omission violates section 219D and is guilty of a felony.
- A person who or a person who conspires with a person who knowingly fails to disburse funds in accordance with a loan commitment made in connection with the mortgage lending process violates section 219D and is guilty of a felony.

- A crime of residential mortgage fraud under this section shall not be predicated solely upon information lawfully disclosed under federal disclosure laws, regulations, or interpretations related to the mortgage lending process.

Each of the above violations constitutes a separate offense.

In determining venue for a prosecution under this section, a violation is considered to have been committed in the county in which the residential property for which the mortgage loan is obtained or sought is located, in the county in which an owner of the property for which the mortgage loan was obtained or sought resides, or in any county in which a material act was performed in furtherance of the violation.

- A person who is found to be guilty of a felony in connection with the mortgage lending process, the punishment will be imprisonment for not more than 15 years or a fine of not more than $100,000.00, or both.

- A person who is found to be guilty of a felony in which the loan value stated on documents used in the mortgage lending process exceeds $100,000.00, the punishment will be imprisonment for not more than 20 years or a fine of not more than $500,000.00, or both.

- This section does not prohibit a person from being charged with, convicted of, or punished for any other violation of law that is committed by that person while violating this section.

- Property of any kind used or intended for use in the course of, derived from, or received in connection with a violation of this section by the person that violated this section is subject to forfeiture in the same manner as provided in Chapter 47 of the Revised Judicature Act of 1961, 1961 PA 236, MCL 600.4701 to 600.4709.

- If a lender or any agent of the lender is convicted of a violation of this section, the borrower in the mortgage lending transaction with regard to which the violation was committed may rescind the transaction within 6 months after the date of the conviction if the borrower gives written notice to the lender and records that notice with the register of deeds of the county in which the mortgage was recorded.

Senate bill No. 44 amends 1927 PA 175, the Code of Criminal Procedure by amending section 16*l* of Chapter XVII, as amended by 2005 PA 171.

Value of money or property	Felony Class	State Maximum Sentence
Residential mortgage fraud violation involving loan valve of $100,000 or less	Class D	15 years
Residential mortgage fraud violation involving loan valve of $100,000 or more	Class B	20 years

This amendment would also change 750.217c (3) by adding - subsequent conviction- to this class H felony which carries a 2 year State maximum sentence for impersonating a public officer or employee.

SUMMARY OF ARGUMENTS

Pro

The bills are intended to provide criminal prosecutors with stronger and more appropriate tools to charge and prosecute mortgage and other types of fraud. The establishment of the crime of "Residential Mortgage Fraud" in SB No. 43 may provide a less arduous process for OFIR to obtain a prohibition under our consumer finance laws against a person who has knowingly made, caused to be made, or used another's false statements or misrepresentations during the mortgage lending process.

Con

none

FISCAL/ECONOMIC IMPACT

OFIR has identified the following revenue or budgetary implications in the bills as follows:

(a) To the Office of Financial and Insurance Regulation:

Budgetary: None

Revenue: None

Comments: These bills will have little direct regulatory impact on OFIR.

(b) To the Department of Licensing AND Regulatory Affairs: None

Budgetary:

Revenue:

Comments:

(c) To the State of Michigan:

Budgetary: The State would incur the cost of felony probation at an annual average cost of $2,500, as well as the cost of incarceration in a State facility at an average annual cost of $35,000.

Revenue: There are no data to indicate how many offenders would be convicted of mortgage loan fraud in an amount that would be subject to the proposed penalties.

Comments:

(d) To Local Governments within this State: All local governments within Michigan would be impacted that bring charges under this section of the Penal Code.

Comments:

OTHER STATE DEPARTMENTS

Department of Corrections

ANY OTHER PERTINENT INFORMATION

Senate bill number 44 is tie-barred to SB No. 43.

ADMINISTRATIVE RULES IMPACT

R. Kevin Clinton
Commissioner

5/2/11
Date